

# Vanity International

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Sept 1, 2017

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room TW-A325  
Washington, D.C. 20554

Re: CC Docket No. 95-155. In the matter of Toll Free Service Access Codes,  
Alliance for Telecommunications Industry Solutions, 800 Services  
management System Number Administration Committee Petition Requesting  
Bureau Action to Revise Toll Free, Code Opening Methodology

On behalf of the Association of Toll Free Professionals (ATFP), ex parte comments  
regarding the above-captioned matter follow:

## **Ex Parte Comments of ATFP**

Members and associates of ATF Professionals hold many of the exclusive-by-market vanity toll-free programs in existence today and have decades of toll-free experience. Programs such as 1-800-Home-Care, 1-800-Pavement, 1-800-Injured, 1-800-800-Cars, 1-800-Laywers, and 1-800-Attorney are examples of exclusive-by-market licensing.

We fully support the Commission's effort to make 833 "*numbers available on an equitable basis*" using an off-line process. In a 2010 submission by Vanity International, a founding member, we outlined how the majority of RespOrgs—and thereby subscribers—were disadvantaged by the high-powered, specialized automation held by a few. Further, we predicted that a 100-per-day allocation did not ensure equal access to 855 toll-free numbers, and later 844 numbers, as it did nothing to "*avert those with the*

*most power connections from getting first pick of the best available numbers*<sup>1</sup>.” We hold today, as recommended then, that code openings are an “*anomaly*” and best allocated by an off-line process.

### **The Auction Format Should be Removed from Discussion**

First, though, we’d like to address a troubling reference in the April 21, 2017 order to assignment by “*auction or lottery*.” While we are recommending a form of lottery, we do not support an auction in any form, under any circumstances, for the following three reasons:

1.       **Implied Property Value:** A cash auction implies that all toll-free numbers now have *property value* and can, therefore, be resold. Time and again, the FCC has held that the sale of toll-free numbers is contrary to the public interest. Furthermore, Les Seltzer (formally of the Common Carrier Division) stated in his presentation at the Forum on Toll Free Administration, March 4, 2002, that “*it would take an act of congress*” to instill property value in toll-free numbers. Compelling users to buy numbers, at any price, would set a precedent that numbers have monetary value.
2.       **International Concerns:** During the 888 replication (circa 1998), the idea of auctioning off the set aside 888 numbers was proposed by Senator John McCain, but ultimately dismissed, once he and others recognized that the North American Numbering Plan covers dozens of

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<sup>1</sup> <https://ecfsapi.fcc.gov/file/7020911075.pdf>

countries, including Canada and many in the Caribbean. With that, what right does US, or its agencies, have to unilaterally benefit from an auction? Alternately, Somos is fully funded by the toll-free community and has no need to extract additional revenues from the community they serve.

3. **Discrimination:** Even if property value and international concerns were dismissed, imposing an auction on the public would defeat the statutory mandate to make “*numbers available on an equitable basis,*” as only well-funded corporations and the well-heeled need apply. While 833 numbers are in demand by all subscribers, an auction would render them out of reach to anyone but the very wealthy.

We believe each rationale is fully aligned with the Commission’s historical position and statutory mandate, and that the auction format must be dismissed.

Most urgently, we believe that even conducting a public discussion, one that contemplates legal property value for toll-free numbers, may cause a *run on the bank* of available numbers. Therefore, we strongly urge the FCC to dismiss the auction format *before* this matter is put out for public comment.

### **Common, Per-Number Lottery**

In the alternate, holding a “*lottery*” in its most common form is also troubling. A common, per-number lottery creates an enticement for mass speculation and number brokering. Put another way, when lottery tickets are free— zero cost— how many chances do you buy? The answer, of course, is “*All you can get.*”

In a common, per-number lottery, there is *zero* marginal cost to submit up to maximum number of requests (currently 2,000). For instance, if a given RespOrg only needs 1,250 numbers there is no disincentive to speculate on 750 more, as each *additional* request is just as free. A common, per-number lottery means that each submission adds *one new chance for reward*, with zero downside. Should such a lottery be open to public, to those who did not submit requests in May, 2017, the speculation would only grow exponentially.

Furthermore, since a common, per-number lottery results in mass speculation, the best numbers are far more likely to fall into the hands of non-users, who would secure them only for resale. The FCC has already had experience with failed lotteries<sup>2</sup>, when it allocated cellular telephone licenses in the 1980's. This open lottery process “*resulted in hundreds of thousands of applications*,” where most were only hoping to “*win a license purely for resale*.”

### **Randomized Round Robin**

These perverse incentives are precisely addressed by the Randomized Round Robin (RRR) form of lottery. The RRR is simply a common round robin, only the *list order is randomized* as well as the draw order. Participants would, otherwise, be forced to seed the best numbers at the top of their submission lists. Yet, unlike a live<sup>3</sup> draft, participants have no way to withdraw and replace their top picks as they are lost to prior assignments.

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<sup>2</sup> See bottom of page 3: <http://faculty.smu.edu/tsalmon/fccchapter.pdf>

<sup>3</sup> Should Somos do a draft? It's too time intensive. With 147 draws per round, a draft would take days while a RRR lottery could be done over several hours.

List-order randomization, in effect, creates a *cost* for speculation without imposing any actual monetary value, which is ideally suited for the allocation of toll-free numbers that have no legal property value. Each additional submission *diminishes the odds* of getting all other numbers on the list, so those who restrain from speculation improve their odds of getting the numbers they actually need. RRR was successfully used in Internet domain<sup>4</sup> address assignments, back when “fairness” was a primary factor.

Before we explore the steps, I’d like to point out that the RRR simply *aggregates* the common lottery into one unified list, while imposing a “*cost*” for speculation. That is, when request lists of equal length are randomized and drawn in random order (RRR), the results are the same as the common, per-number lottery. For example, five RespOrgs, each requesting the same 1,250 numbers, would all be assigned a fair percentage of the numbers requested, at random, just as if each were drawn from a hat. In contrast, should any one of these RespOrg elect to speculate on 750 additional numbers, their share of the 1,250 numbers actually needed would be proportionally reduced. That’s how “*cost*” is imposed on speculation<sup>5</sup>. Here is a summary of the steps:

- Participating RespOrgs re-submit a request list with up to 2,000 selections<sup>6</sup>
- The list order is randomized, thus, there is no advantage to seeding the best numbers first, nor will all the best numbers be assigned in the first rounds.

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<sup>4</sup> “to ensure fairness, Afiliis implemented registration via four queues with randomized round robin system.” See: <https://icannwiki.org/info> . Internet domains are currently assigned to the high bidder, as profit has become the primary motive.

<sup>5</sup> If this is not obvious, here’s how this works: Submitting 2,000 numbers will seed the 1,250 needed ones over all 2,000 rounds of draw, as the lists are randomized. In contrast, submitting just the 1,250 numbers will seed them over the *first* 1,250 rounds, thus the 1,250 are more likely to be assigned by eliminating 750 rounds of chance.

<sup>6</sup> As we outline below, we recommend that the FCC cap the list size at the quantity of numbers submitted in the in the pre-assignment round in May, 2017, *minus* the quantity of numbers pre-assigned. For example, a RespOrg submitting 1,500 requests where 500 were pre-assigned, would then be eligible to revised and re-submit up to 1,000 requests. The only way any RespOrg would be eligible for list size of 2,000 is to have submitted 2,000 in May, 2017 and none were pre-assigned.

- The draw order is randomized, thus, all RespOrgs have any equal chance to being the first assignment, second, third, and so forth.
- The Round Robin draw proceeds, one request per round, from the first list to last, from the first request to last one, where both the draw order and list order have been randomized.
- Numbers are assigned *only if available at the time of the draw* (“assigned”). If the requested number is unavailable (“taken”), no assignment is made and the draw continues on to the next RespOrg in order.
- The Round Robin proceeds up to 2,000 rounds, where one request from each RespOrg is either assigned or denied, if taken, until the longest request list is processed.

The Randomized Round Robin (RRR) format was proposed in the September 2, 2010<sup>7</sup> comments of Vanity International and has already been out for public comment.

While this RRR assignment is simple enough to be processed with spreadsheet, the registry, now Somos, has in-house programming expertise to automate the process and to share results in near real-time. Transparency will foster trust in the process.

The only known objection was made by the Toll-Free Number Coalition (the “Coalition”) in their September 9, 2010 reply comments and addressed by Vanity International in their September 9, 2010 reply and ex parte comments<sup>8</sup> on September 12, 2010. The Coalition objected to randomized list order and, rather, suggested that lists should be seeded: submitted in the “*customer’s order of preference*” so that their first choices will be assigned before the others, thus improving the odds of those assignment. While this argument seems appealing, without randomization there is no *disincentive* to speculate. RespOrgs would pay no price for submitting speculative requests. Rather, a RespOrg would simply submit the 1,250 numbers they need first, and *then speculate* on

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<sup>7</sup> <https://ecfsapi.fcc.gov/file/7020911075.pdf>

<sup>8</sup> <https://ecfsapi.fcc.gov/file/7020912169.pdf>

750 more below that. What's worse is that list seeding invites discrimination, as carriers will certainly submit requests from their biggest and more important customers first, seeding the less important ones at the end, or leaving them off all together.

Finally, if any RespOrg asserts *they* are disadvantaged by this method of equitable allocation, it is essential to note that "*real customers*" are in no way disadvantaged; they can place their order with any RespOrg they like.

### **RespOrgs Must be Allowed to Resubmit Request Lists**

We raise a strong objection to using the submitted lists as the final request lists. Both the ramification of list size and the current status of customer orders, could not be known when submitted in May, 2017. The April 22, 2017 order had no disincentives to constrain speculation or the length of the submission list.

Regardless of lottery format, RespOrgs must be allowed to resubmit their request lists, if only to allow for cancellations, i.e. subscribers that no longer desire numbers placed on the original list and have moved on. All submitted lists submitted in May, 2017 were only accurate on the day of submission. The best practice, we believe, is to require that all participating RespOrgs *resubmit* a list after a final order has been issued. In the interim, all will be free to work around lost orders, and *add new-comers*, within the constraints of their original, May, 2017 submission, as detailed below.

### **Closed or Open Lottery**

The final question is whether the lottery should be open or closed, open to newcomers or restricted to the just the original, contested submissions. We don't have a fast position on which way this should be decided but, rather, believe the FCC has the best vantage point to make such a determination.

Surely, in the intervening months, there have been new customers requesting access to these “*mutually exclusive*” numbers. The counter argument is that these numbers were exclusively set aside for *those who requested them* at the pre-assignment round— and everyone else just missed the deadline. A further reality is that some existing orders are likely to be canceled by customers who had hopes of getting numbers in the pre-assignment, but have since moved on to more immediate options. The longer this FCC decision languishes, the more pressure will mount in all directions.

Had the lottery format been included in the order, then the submission would be the closed by design. As time has gone by, however, pressure has built to open it to new customers. We believe there is one good way to resolve this dilemma that aligns with all of the above concerns.

The FCC could require participating RespOrgs to resubmit a final list, *up to the number of mutually exclusives* on their original list, once the lottery format is defined. That is to say, for example, a RespOrg that submitted a list of 1,500 with 500 pre-assignments, would then be eligible to submit a revised list *not to exceed* 1,000 or, at their discretion, simply resubmit the original list, less the numbers that were pre-assigned at the opening. Another RespOrg that submitted 2,000 numbers with 1,700 pre-assignments would be permitted to resubmit a list of just 300. The FCC could further constrain the resubmitted lists to include *only those numbers* initially requested. The proposed rules could be:

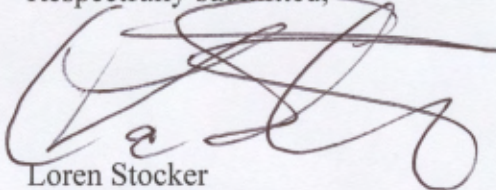
1. Participating RespOrgs may submit *no more* numbers (in total) then they requested in May 2017, the total requested less the quantity of numbers pre-assigned.
2. RespOrgs may submit *no other* numbers then those originally requested.



These prospective rules (*"no more" and "no others"*) respect both the integrity of the May, 2017 deadline and effectively bars participating RespOrgs from expanding their influence at a later date and time, and non-participating RespOrgs from having a *"second bite at the apple."*

The magic here is that RespOrgs can concurrently *add new customers as they replace customers lost through attrition*, all while maintaining the integrity of the process. While participating RespOrgs may be constrained by their May, 2017 submissions, it is essential to note that the *public will not be barred from participation*. They can work with the participating RespOrg of their choice. There are 147 to choose from.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be 'Loren Stocker', with a large, stylized flourish extending to the right.

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